

INITIATIVE 1107

To the People

Chapter 2, Laws of 2011

REVERSING CERTAIN 2010 AMENDMENTS TO STATE TAX LAWS

EFFECTIVE DATE: 12/02/10

Approved by the
People of the State of Washington
in the General Election on
November 2, 2010

ORIGINALLY FILED

May 19, 2010

Secretary of State

1 AN ACT Relating to repealing tax increases on certain processed
2 foods, bottled water, candy, and carbonated beverages enacted by the
3 2010 legislature; amending RCW 82.04.4266, 82.04.260, 82.04.298,
4 82.04.440, 82.08.0293, 82.08.0293, 82.12.0293, and 82.12.0293; creating
5 new sections; repealing RCW 82.04.---, 82.08.---, 82.12.---, 82.08.---,
6 82.12.---, 82.04.---, and 82.--.--- through 82.--.---; and providing a
7 contingent effective date.

8 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

9 **PART I**
10 **Intent**

11 NEW SECTION. **Sec. 101.** The people of the state of Washington in
12 enacting this initiative measure find:

13 (1) The 2010 legislature adopted legislation that imposed new or
14 higher taxes on many common food and beverage products, increasing the
15 tax burden on Washington consumers and businesses by hundreds of
16 millions of dollars;

17 (2) Taxes on food and beverages hurt all Washington consumers, and

1 especially hurt lower and middle income taxpayers who can least afford
2 it;

3 (3) The legislature's tax increases on food and beverages come at
4 a time when Washington residents and businesses already face an
5 economic crisis;

6 (4) The process the legislature used to increase taxes on food and
7 beverages did not provide adequate public input on or scrutiny of the
8 proposed tax increases;

9 (5) Washington residents already pay among the highest sales taxes
10 in the country;

11 (6) The legislature's tax increases on food and beverages hurt
12 Washington food and beverage producers and retail businesses by making
13 their products more costly and less competitive;

14 (7) The legislature's tax increases on food and beverages will hurt
15 Washington's economy and cause the loss of many local jobs; and

16 (8) The legislature's tax increases on food and beverages
17 arbitrarily and unfairly impose higher taxes on some food and beverage
18 products but not on others that are similar or essentially the same.

19 For these reasons, the people repeal the food and beverage taxes
20 imposed by the 2010 legislature.

21 PART II

22 Repeal of Tax Increases on Foods Made from Certain Agricultural 23 Products

24 NEW SECTION. **Sec. 201.** RCW 82.04.--- and 2010 1st sp.s. c 23 s
25 502 are each repealed.

26 **Sec. 202.** RCW 82.04.4266 and 2010 1st sp.s. c 23 s 504 are each
27 amended to read as follows:

28 (1) This chapter does not apply to the value of products or the
29 gross proceeds of sales derived from:

30 (a) Manufacturing fruits or vegetables (~~(products)~~) by canning,
31 preserving, freezing, processing, or dehydrating fresh fruits or
32 vegetables; or

33 (b) Selling at wholesale fruits or vegetables (~~(products)~~)
34 manufactured by the seller by canning, preserving, freezing,
35 processing, or dehydrating fresh fruits or vegetables and sold to

1 purchasers who transport in the ordinary course of business the goods
2 out of this state. A person taking an exemption under this subsection
3 (1)(b) must keep and preserve records for the period required by RCW
4 82.32.070 establishing that the goods were transported by the purchaser
5 in the ordinary course of business out of this state.

6 ~~(2) ((a) "Fruit or vegetable products" means:~~

7 ~~— (i) Products comprised exclusively of fruits, vegetables, or both,~~
8 ~~and~~

9 ~~— (ii) Products comprised of fruits, vegetables, or both, and which~~
10 ~~may also contain water, sugar, salt, seasonings, preservatives,~~
11 ~~binders, stabilizers, flavorings, yeast, and similar substances.~~
12 ~~However, the amount of all ingredients contained in the product, other~~
13 ~~than fruits, vegetables, and water, may not exceed the amount of fruits~~
14 ~~and vegetables contained in the product measured by weight or volume.~~

15 ~~— (b) "Fruit or vegetable products" includes only products that are~~
16 ~~intended for human consumption as food or animal consumption as feed.~~

17 ~~— (3))~~ A person claiming the exemption provided in this section must
18 file a complete annual survey with the department under RCW 82.32.---
19 (section 102, chapter 114 (SHB 3066), Laws of 2010).

20 ~~((4))~~ (3) This section expires July 1, 2012.

21 **Sec. 203.** RCW 82.04.260 and 2010 1st sp.s. c 23 s 506 are each
22 amended to read as follows:

23 (1) Upon every person engaging within this state in the business of
24 manufacturing:

25 (a) Wheat into flour, barley into pearl barley, soybeans into
26 soybean oil, canola into canola oil, canola meal, or canola by-
27 products, or sunflower seeds into sunflower oil; as to such persons the
28 amount of tax with respect to such business is equal to the value of
29 the flour, pearl barley, oil, canola meal, or canola by-product
30 manufactured, multiplied by the rate of 0.138 percent;

31 (b) Beginning July 1, 2012, seafood products that remain in a raw,
32 raw frozen, or raw salted state at the completion of the manufacturing
33 by that person; or selling manufactured seafood products that remain in
34 a raw, raw frozen, or raw salted state at the completion of the
35 manufacturing, to purchasers who transport in the ordinary course of
36 business the goods out of this state; as to such persons the amount of
37 tax with respect to such business is equal to the value of the products

1 manufactured or the gross proceeds derived from such sales, multiplied
2 by the rate of 0.138 percent. Sellers must keep and preserve records
3 for the period required by RCW 82.32.070 establishing that the goods
4 were transported by the purchaser in the ordinary course of business
5 out of this state;

6 (c) Beginning July 1, 2012, dairy products that as of September 20,
7 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
8 including by-products from the manufacturing of the dairy products such
9 as whey and casein; or selling the same to purchasers who transport in
10 the ordinary course of business the goods out of state; as to such
11 persons the tax imposed is equal to the value of the products
12 manufactured or the gross proceeds derived from such sales multiplied
13 by the rate of 0.138 percent. Sellers must keep and preserve records
14 for the period required by RCW 82.32.070 establishing that the goods
15 were transported by the purchaser in the ordinary course of business
16 out of this state;

17 (d) ~~((i))~~ Beginning July 1, 2012, fruits or vegetables
18 ~~((products))~~ by canning, preserving, freezing, processing, or
19 dehydrating fresh fruits or vegetables, or selling at wholesale fruits
20 or vegetables ~~((products))~~ manufactured by the seller by canning,
21 preserving, freezing, processing, or dehydrating fresh fruits or
22 vegetables and sold to purchasers who transport in the ordinary course
23 of business the goods out of this state; as to such persons the amount
24 of tax with respect to such business is equal to the value of the
25 products manufactured or the gross proceeds derived from such sales
26 multiplied by the rate of 0.138 percent. Sellers must keep and
27 preserve records for the period required by RCW 82.32.070 establishing
28 that the goods were transported by the purchaser in the ordinary course
29 of business out of this state;

30 ~~((iii) For purposes of this subsection, "fruit or vegetable~~
31 ~~products" means:~~

32 ~~— (A) Products comprised exclusively of fruits, vegetables, or both,~~
33 ~~or~~

34 ~~— (B) Products comprised of fruits, vegetables, or both, and which~~
35 ~~may also contain water, sugar, salt, seasonings, preservatives,~~
36 ~~binders, stabilizers, flavorings, yeast, and similar substances.~~

37 ~~However, the amount of all ingredients contained in the product, other~~

1 ~~than fruits, vegetables, and water, may not exceed the amount of fruits~~
2 ~~and vegetables contained in the product measured by weight or volume;~~
3 ~~— (iii) "Fruit and vegetable products" includes only products that~~
4 ~~are intended for human consumption as food or animal consumption as~~
5 ~~feed;))~~

6 (e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel
7 feedstock, as those terms are defined in RCW 82.29A.135; as to such
8 persons the amount of tax with respect to the business is equal to the
9 value of alcohol fuel, biodiesel fuel, or biodiesel feedstock
10 manufactured, multiplied by the rate of 0.138 percent; and

11 (f) Wood biomass fuel as defined in RCW 82.29A.135; as to such
12 persons the amount of tax with respect to the business is equal to the
13 value of wood biomass fuel manufactured, multiplied by the rate of
14 0.138 percent.

15 (2) Upon every person engaging within this state in the business of
16 splitting or processing dried peas; as to such persons the amount of
17 tax with respect to such business is equal to the value of the peas
18 split or processed, multiplied by the rate of 0.138 percent.

19 (3) Upon every nonprofit corporation and nonprofit association
20 engaging within this state in research and development, as to such
21 corporations and associations, the amount of tax with respect to such
22 activities is equal to the gross income derived from such activities
23 multiplied by the rate of 0.484 percent.

24 (4) Upon every person engaging within this state in the business of
25 slaughtering, breaking and/or processing perishable meat products
26 and/or selling the same at wholesale only and not at retail; as to such
27 persons the tax imposed is equal to the gross proceeds derived from
28 such sales multiplied by the rate of 0.138 percent.

29 (5) Upon every person engaging within this state in the business of
30 acting as a travel agent or tour operator; as to such persons the
31 amount of the tax with respect to such activities is equal to the gross
32 income derived from such activities multiplied by the rate of 0.275
33 percent.

34 ~~((+5))~~ (6) Upon every person engaging within this state in
35 business as an international steamship agent, international customs
36 house broker, international freight forwarder, vessel and/or cargo
37 charter broker in foreign commerce, and/or international air cargo

1 agent; as to such persons the amount of the tax with respect to only
2 international activities is equal to the gross income derived from such
3 activities multiplied by the rate of 0.275 percent.

4 ~~((+6))~~ (7) Upon every person engaging within this state in the
5 business of stevedoring and associated activities pertinent to the
6 movement of goods and commodities in waterborne interstate or foreign
7 commerce; as to such persons the amount of tax with respect to such
8 business is equal to the gross proceeds derived from such activities
9 multiplied by the rate of 0.275 percent. Persons subject to taxation
10 under this subsection are exempt from payment of taxes imposed by
11 chapter 82.16 RCW for that portion of their business subject to
12 taxation under this subsection. Stevedoring and associated activities
13 pertinent to the conduct of goods and commodities in waterborne
14 interstate or foreign commerce are defined as all activities of a
15 labor, service or transportation nature whereby cargo may be loaded or
16 unloaded to or from vessels or barges, passing over, onto or under a
17 wharf, pier, or similar structure; cargo may be moved to a warehouse or
18 similar holding or storage yard or area to await further movement in
19 import or export or may move to a consolidation freight station and be
20 stuffed, unstuffed, containerized, separated or otherwise segregated or
21 aggregated for delivery or loaded on any mode of transportation for
22 delivery to its consignee. Specific activities included in this
23 definition are: Wharfage, handling, loading, unloading, moving of
24 cargo to a convenient place of delivery to the consignee or a
25 convenient place for further movement to export mode; documentation
26 services in connection with the receipt, delivery, checking, care,
27 custody and control of cargo required in the transfer of cargo;
28 imported automobile handling prior to delivery to consignee; terminal
29 stevedoring and incidental vessel services, including but not limited
30 to plugging and unplugging refrigerator service to containers,
31 trailers, and other refrigerated cargo receptacles, and securing ship
32 hatch covers.

33 ~~((+7)(a))~~ (8) Upon every person engaging within this state in the
34 business of disposing of low-level waste, as defined in RCW 43.145.010;
35 as to such persons the amount of the tax with respect to such business
36 is equal to the gross income of the business, excluding any fees
37 imposed under chapter 43.200 RCW, multiplied by the rate of 3.3
38 percent.

1 (~~(b)~~) If the gross income of the taxpayer is attributable to
2 activities both within and without this state, the gross income
3 attributable to this state must be determined in accordance with the
4 methods of apportionment required under RCW 82.04.460.

5 (~~(8)~~) (9) Upon every person engaging within this state as an
6 insurance producer or title insurance agent licensed under chapter
7 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as
8 to such persons, the amount of the tax with respect to such licensed
9 activities is equal to the gross income of such business multiplied by
10 the rate of 0.484 percent.

11 (~~(9)~~) (10) Upon every person engaging within this state in
12 business as a hospital, as defined in chapter 70.41 RCW, that is
13 operated as a nonprofit corporation or by the state or any of its
14 political subdivisions, as to such persons, the amount of tax with
15 respect to such activities is equal to the gross income of the business
16 multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5
17 percent thereafter.

18 (~~(10)~~) (11)(a) Beginning October 1, 2005, upon every person
19 engaging within this state in the business of manufacturing commercial
20 airplanes, or components of such airplanes, or making sales, at retail
21 or wholesale, of commercial airplanes or components of such airplanes,
22 manufactured by the seller, as to such persons the amount of tax with
23 respect to such business is, in the case of manufacturers, equal to the
24 value of the product manufactured and the gross proceeds of sales of
25 the product manufactured, or in the case of processors for hire, equal
26 to the gross income of the business, multiplied by the rate of:

- 27 (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and
28 (ii) 0.2904 percent beginning July 1, 2007.

29 (b) Beginning July 1, 2008, upon every person who is not eligible
30 to report under the provisions of (a) of this subsection (~~(10)~~) (11)
31 and is engaging within this state in the business of manufacturing
32 tooling specifically designed for use in manufacturing commercial
33 airplanes or components of such airplanes, or making sales, at retail
34 or wholesale, of such tooling manufactured by the seller, as to such
35 persons the amount of tax with respect to such business is, in the case
36 of manufacturers, equal to the value of the product manufactured and
37 the gross proceeds of sales of the product manufactured, or in the case

1 of processors for hire, be equal to the gross income of the business,
2 multiplied by the rate of 0.2904 percent.

3 (c) For the purposes of this subsection (~~((10))~~) (11), "commercial
4 airplane" and "component" have the same meanings as provided in RCW
5 82.32.550.

6 (d) In addition to all other requirements under this title, a
7 person reporting under the tax rate provided in this subsection
8 (~~((10))~~) (11) must file a complete annual report with the department
9 under RCW 82.32.--- (section 103, chapter 114 (SHB 3066), Laws of
10 2010).

11 (e) This subsection (~~((10))~~) (11) does not apply on and after July
12 1, 2024.

13 (~~((11))~~) (12)(a) Until July 1, 2024, upon every person engaging
14 within this state in the business of extracting timber or extracting
15 for hire timber; as to such persons the amount of tax with respect to
16 the business is, in the case of extractors, equal to the value of
17 products, including by-products, extracted, or in the case of
18 extractors for hire, equal to the gross income of the business,
19 multiplied by the rate of 0.4235 percent from July 1, 2006, through
20 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,
21 2024.

22 (b) Until July 1, 2024, upon every person engaging within this
23 state in the business of manufacturing or processing for hire: (i)
24 Timber into timber products or wood products; or (ii) timber products
25 into other timber products or wood products; as to such persons the
26 amount of the tax with respect to the business is, in the case of
27 manufacturers, equal to the value of products, including by-products,
28 manufactured, or in the case of processors for hire, equal to the gross
29 income of the business, multiplied by the rate of 0.4235 percent from
30 July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1,
31 2007, through June 30, 2024.

32 (c) Until July 1, 2024, upon every person engaging within this
33 state in the business of selling at wholesale: (i) Timber extracted by
34 that person; (ii) timber products manufactured by that person from
35 timber or other timber products; or (iii) wood products manufactured by
36 that person from timber or timber products; as to such persons the
37 amount of the tax with respect to the business is equal to the gross
38 proceeds of sales of the timber, timber products, or wood products

1 multiplied by the rate of 0.4235 percent from July 1, 2006, through
2 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,
3 2024.

4 (d) Until July 1, 2024, upon every person engaging within this
5 state in the business of selling standing timber; as to such persons
6 the amount of the tax with respect to the business is equal to the
7 gross income of the business multiplied by the rate of 0.2904 percent.
8 For purposes of this subsection (~~((111))~~) (12)(d), "selling standing
9 timber" means the sale of timber apart from the land, where the buyer
10 is required to sever the timber within thirty months from the date of
11 the original contract, regardless of the method of payment for the
12 timber and whether title to the timber transfers before, upon, or after
13 severance.

14 (e) For purposes of this subsection, the following definitions
15 apply:

16 (i) "Biocomposite surface products" means surface material products
17 containing, by weight or volume, more than fifty percent recycled paper
18 and that also use nonpetroleum-based phenolic resin as a bonding agent.

19 (ii) "Paper and paper products" means products made of interwoven
20 cellulosic fibers held together largely by hydrogen bonding. "Paper
21 and paper products" includes newsprint; office, printing, fine, and
22 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
23 kraft bag, construction, and other kraft industrial papers; paperboard,
24 liquid packaging containers, containerboard, corrugated, and solid-
25 fiber containers including linerboard and corrugated medium; and
26 related types of cellulosic products containing primarily, by weight or
27 volume, cellulosic materials. "Paper and paper products" does not
28 include books, newspapers, magazines, periodicals, and other printed
29 publications, advertising materials, calendars, and similar types of
30 printed materials.

31 (iii) "Recycled paper" means paper and paper products having fifty
32 percent or more of their fiber content that comes from postconsumer
33 waste. For purposes of this subsection (~~((111))~~) (12)(e)(iii),
34 "postconsumer waste" means a finished material that would normally be
35 disposed of as solid waste, having completed its life cycle as a
36 consumer item.

37 (iv) "Timber" means forest trees, standing or down, on privately or

1 publicly owned land. "Timber" does not include Christmas trees that
2 are cultivated by agricultural methods or short-rotation hardwoods as
3 defined in RCW 84.33.035.

4 (v) "Timber products" means:

5 (A) Logs, wood chips, sawdust, wood waste, and similar products
6 obtained wholly from the processing of timber, short-rotation hardwoods
7 as defined in RCW 84.33.035, or both;

8 (B) Pulp, including market pulp and pulp derived from recovered
9 paper or paper products; and

10 (C) Recycled paper, but only when used in the manufacture of
11 biocomposite surface products.

12 (vi) "Wood products" means paper and paper products; dimensional
13 lumber; engineered wood products such as particleboard, oriented strand
14 board, medium density fiberboard, and plywood; wood doors; wood
15 windows; and biocomposite surface products.

16 (f) Except for small harvesters as defined in RCW 84.33.035, a
17 person reporting under the tax rate provided in this subsection
18 (~~((11))~~) (12) must file a complete annual survey with the department
19 under RCW 82.32.--- (section 102, chapter 114 (SHB 3066), Laws of
20 2010).

21 (~~((12))~~) (13) Upon every person engaging within this state in
22 inspecting, testing, labeling, and storing canned salmon owned by
23 another person, as to such persons, the amount of tax with respect to
24 such activities is equal to the gross income derived from such
25 activities multiplied by the rate of 0.484 percent.

26 (~~((13))~~) (14)(a) Upon every person engaging within this state in
27 the business of printing a newspaper, publishing a newspaper, or both,
28 the amount of tax on such business is equal to the gross income of the
29 business multiplied by the rate of 0.2904 percent.

30 (b) A person reporting under the tax rate provided in this
31 subsection (~~((13))~~) (14) must file a complete annual report with the
32 department under RCW 82.32.--- (section 103, chapter 114 (SHB 3066),
33 Laws of 2010).

34 **Sec. 204.** RCW 82.04.298 and 2010 1st sp.s. c 23 s 511 are each
35 amended to read as follows:

36 (1) The amount of tax with respect to a qualified grocery
37 distribution cooperative's sales of groceries or related goods for

1 resale, excluding items subject to tax under RCW (~~82.04.~~ (section
2 ~~502 of this act~~)) 82.04.260(4), to customer-owners of the grocery
3 distribution cooperative is equal to the gross proceeds of sales of the
4 grocery distribution cooperative multiplied by the rate of one and
5 one-half percent.

6 (2) A qualified grocery distribution cooperative is allowed a
7 deduction from the gross proceeds of sales of groceries or related
8 goods for resale, excluding items subject to tax under RCW (~~82.04.~~
9 ~~(section 502 of this act)~~) 82.04.260(4), to customer-owners of the
10 grocery distribution cooperative that is equal to the portion of the
11 gross proceeds of sales for resale that represents the actual cost of
12 the merchandise sold by the grocery distribution cooperative to
13 customer-owners.

14 (3) The definitions in this subsection apply throughout this
15 section unless the context clearly requires otherwise.

16 (a) "Grocery distribution cooperative" means an entity that sells
17 groceries and related items to customer-owners of the grocery
18 distribution cooperative and has customer-owners, in the aggregate, who
19 own a majority of the outstanding ownership interests of the grocery
20 distribution cooperative or of the entity controlling the grocery
21 distribution cooperative. "Grocery distribution cooperative" includes
22 an entity that controls a grocery distribution cooperative.

23 (b) "Qualified grocery distribution cooperative" means:

24 (i) A grocery distribution cooperative that has been determined by
25 a court of record of the state of Washington to be not engaged in
26 wholesaling or making sales at wholesale, within the meaning of RCW
27 82.04.270 or any similar provision of a municipal ordinance that
28 imposes a tax on gross receipts, gross proceeds of sales, or gross
29 income, with respect to purchases made by customer-owners, and
30 subsequently changes its form of doing business to make sales at
31 wholesale of groceries or related items to its customer-owners; or

32 (ii) A grocery distribution cooperative that has acquired
33 substantially all of the assets of a grocery distribution cooperative
34 described in (b) (i) of this subsection.

35 (c) "Customer-owner" means a person who has an ownership interest
36 in a grocery distribution cooperative and purchases groceries and
37 related items at wholesale from that grocery distribution cooperative.

1 (d) "Controlling" means holding fifty percent or more of the voting
2 interests of an entity and having at least equal power to direct or
3 cause the direction of the management and policies of the entity,
4 whether through the ownership of voting securities, by contract, or
5 otherwise.

6 **Sec. 205.** RCW 82.04.440 and 2010 1st sp.s. c 23 s 513 are each
7 amended to read as follows:

8 (1) Every person engaged in activities that are subject to tax
9 under two or more provisions of RCW 82.04.230 through 82.04.298,
10 inclusive, is taxable under each provision applicable to those
11 activities.

12 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270,
13 82.04.294(2), or 82.04.260 (1)(b), (c), or (d), (~~((10), or)~~) (4), (11),
14 or (~~(section 502(2) of this act)~~) (12) with respect to selling products
15 in this state, including those persons who are also taxable under RCW
16 82.04.261, are allowed a credit against those taxes for any (a)
17 manufacturing taxes paid with respect to the manufacturing of products
18 so sold in this state, and/or (b) extracting taxes paid with respect to
19 the extracting of products so sold in this state or ingredients of
20 products so sold in this state. Extracting taxes taken as credit under
21 subsection (3) of this section may also be taken under this subsection,
22 if otherwise allowable under this subsection. The amount of the credit
23 may not exceed the tax liability arising under this chapter with
24 respect to the sale of those products.

25 (3) Persons taxable as manufacturers under RCW 82.04.240 or
26 82.04.260 (1)(b) or (~~((11))~~) (12), including those persons who are also
27 taxable under RCW 82.04.261, are allowed a credit against those taxes
28 for any extracting taxes paid with respect to extracting the
29 ingredients of the products so manufactured in this state. The amount
30 of the credit may not exceed the tax liability arising under this
31 chapter with respect to the manufacturing of those products.

32 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
33 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (~~((10), or)~~) (4),
34 (11), or (~~(section 502(1) of this act)~~) (12), including those persons
35 who are also taxable under RCW 82.04.261, with respect to extracting or
36 manufacturing products in this state are allowed a credit against those
37 taxes for any (i) gross receipts taxes paid to another state with

1 respect to the sales of the products so extracted or manufactured in
2 this state, (ii) manufacturing taxes paid with respect to the
3 manufacturing of products using ingredients so extracted in this state,
4 or (iii) manufacturing taxes paid with respect to manufacturing
5 activities completed in another state for products so manufactured in
6 this state. The amount of the credit may not exceed the tax liability
7 arising under this chapter with respect to the extraction or
8 manufacturing of those products.

9 (5) For the purpose of this section:

10 (a) "Gross receipts tax" means a tax:

11 (i) Which is imposed on or measured by the gross volume of
12 business, in terms of gross receipts or in other terms, and in the
13 determination of which the deductions allowed would not constitute the
14 tax an income tax or value added tax; and

15 (ii) Which is also not, pursuant to law or custom, separately
16 stated from the sales price.

17 (b) "State" means (i) the state of Washington, (ii) a state of the
18 United States other than Washington, or any political subdivision of
19 such other state, (iii) the District of Columbia, and (iv) any foreign
20 country or political subdivision thereof.

21 (c) "Manufacturing tax" means a gross receipts tax imposed on the
22 act or privilege of engaging in business as a manufacturer, and
23 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
24 82.04.2909(1), 82.04.260 (1), (2), (~~(10)~~, and) (4), (11), (~~section~~
25 ~~502(1) of this act~~) and (12), and 82.04.294(1); (ii) the tax imposed
26 under RCW 82.04.261 on persons who are engaged in business as a
27 manufacturer; and (iii) similar gross receipts taxes paid to other
28 states.

29 (d) "Extracting tax" means a gross receipts tax imposed on the act
30 or privilege of engaging in business as an extractor, and includes (i)
31 the tax imposed on extractors in RCW 82.04.230 and 82.04.260(~~(11)~~)
32 (12); (ii) the tax imposed under RCW 82.04.261 on persons who are
33 engaged in business as an extractor; and (iii) similar gross receipts
34 taxes paid to other states.

35 (e) "Business", "manufacturer", "extractor", and other terms used
36 in this section have the meanings given in RCW 82.04.020 through
37 82.04.212, notwithstanding the use of those terms in the context of
38 describing taxes imposed by other states.

1 **PART III**

2 **Repeal of Tax Increases on Bottled Water and Candy**

3 **Sec. 301.** RCW 82.08.0293 and 2010 1st sp.s. c 23 s 902 are each
4 amended to read as follows:

5 (1) The tax levied by RCW 82.08.020 does not apply to sales of food
6 and food ingredients. "Food and food ingredients" means substances,
7 whether in liquid, concentrated, solid, frozen, dried, or dehydrated
8 form, that are sold for ingestion or chewing by humans and are consumed
9 for their taste or nutritional value. "Food and food ingredients" does
10 not include:

11 (a) "Alcoholic beverages," which means beverages that are suitable
12 for human consumption and contain one-half of one percent or more of
13 alcohol by volume; and

14 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
15 tobacco, or any other item that contains tobacco.

16 (2) ~~((Until July 1, 2013,))~~ The exemption of "food and food
17 ingredients" provided for in subsection (1) of this section does not
18 apply to prepared food, soft drinks, ~~((bottled water, candy,))~~ or
19 dietary supplements. ~~((Beginning July 1, 2013, the exemption of "food
20 and food ingredients" provided for in subsection (1) of this section
21 does not apply to prepared food, soft drinks, candy, or dietary
22 supplements.))~~ For purposes of this subsection, the following
23 definitions apply:

24 (a) "Dietary supplement" means any product, other than tobacco,
25 intended to supplement the diet that:

26 (i) Contains one or more of the following dietary ingredients:

27 (A) A vitamin;

28 (B) A mineral;

29 (C) An herb or other botanical;

30 (D) An amino acid;

31 (E) A dietary substance for use by humans to supplement the diet by
32 increasing the total dietary intake; or

33 (F) A concentrate, metabolite, constituent, extract, or combination
34 of any ingredient described in this subsection;

35 (ii) Is intended for ingestion in tablet, capsule, powder, softgel,
36 gelcap, or liquid form, or if not intended for ingestion in such form,
37 is not represented as conventional food and is not represented for use
38 as a sole item of a meal or of the diet; and

1 (iii) Is required to be labeled as a dietary supplement,
2 identifiable by the "supplement facts" box found on the label as
3 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as
4 of January 1, 2003.

5 (b) (i) "Prepared food" means:

6 (A) Food sold in a heated state or heated by the seller;

7 (B) Food sold with eating utensils provided by the seller,
8 including plates, knives, forks, spoons, glasses, cups, napkins, or
9 straws. A plate does not include a container or packaging used to
10 transport the food; or

11 (C) Two or more food ingredients mixed or combined by the seller
12 for sale as a single item, except:

13 (I) Food that is only cut, repackaged, or pasteurized by the
14 seller; or

15 (II) Raw eggs, fish, meat, poultry, and foods containing these raw
16 animal foods requiring cooking by the consumer as recommended by the
17 federal food and drug administration in chapter 3, part 401.11 of The
18 Food Code, published by the food and drug administration, as amended or
19 renumbered as of January 1, 2003, so as to prevent foodborne illness.

20 (ii) "Prepared food" does not include the following food or food
21 ingredients, if the food or food ingredients are sold without eating
22 utensils provided by the seller:

23 (A) Food sold by a seller whose proper primary North American
24 industry classification system (NAICS) classification is manufacturing
25 in sector 311, except subsector 3118 (bakeries), as provided in the
26 "North American industry classification system--United States, 2002";

27 (B) Food sold in an unheated state by weight or volume as a single
28 item; or

29 (C) Bakery items. The term "bakery items" includes bread, rolls,
30 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
31 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

32 (c) "Soft drinks" means nonalcoholic beverages that contain natural
33 or artificial sweeteners. Soft drinks do not include beverages that
34 contain: Milk or milk products; soy, rice, or similar milk
35 substitutes; or greater than fifty percent of vegetable or fruit juice
36 by volume.

37 ~~((d) "Candy" means a preparation of sugar, honey, or other natural~~
38 ~~or artificial sweeteners in combination with chocolate, fruits, nuts,~~

1 ~~or other ingredients or flavorings in the form of bars, drops, or~~
2 ~~pieces. "Candy" does not include any preparation containing flour and~~
3 ~~does not require refrigeration.~~

4 ~~— (e) "Bottled water" means water that is placed in a sealed~~
5 ~~container or package for human consumption. Bottled water is calorie~~
6 ~~free and does not contain sweeteners or other additives except that it~~
7 ~~may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)~~
8 ~~carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;~~
9 ~~(vi) preservatives; and (vii) only those flavors, extracts, or essences~~
10 ~~derived from a spice or fruit. "Bottled water" includes water that is~~
11 ~~delivered to the buyer in a reusable container that is not sold with~~
12 ~~the water.)~~

13 (3) Notwithstanding anything in this section to the contrary, the
14 exemption of "food and food ingredients" provided in this section
15 applies to food and food ingredients that are furnished, prepared, or
16 served as meals:

17 (a) Under a state administered nutrition program for the aged as
18 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
19 74.38.040(6);

20 (b) That are provided to senior citizens, individuals with
21 disabilities, or low-income persons by a not-for-profit organization
22 organized under chapter 24.03 or 24.12 RCW; or

23 (c) That are provided to residents, sixty-two years of age or
24 older, of a qualified low-income senior housing facility by the lessor
25 or operator of the facility. The sale of a meal that is billed to both
26 spouses of a marital community or both domestic partners of a domestic
27 partnership meets the age requirement in this subsection (3)(c) if at
28 least one of the spouses or domestic partners is at least sixty-two
29 years of age. For purposes of this subsection, "qualified low-income
30 senior housing facility" means a facility:

31 (i) That meets the definition of a qualified low-income housing
32 project under 26 U.S.C. Sec. 42 of the federal internal revenue code,
33 as existing on August 1, 2009;

34 (ii) That has been partially funded under 42 U.S.C. Sec. 1485; and

35 (iii) For which the lessor or operator has at any time been
36 entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42
37 of the federal internal revenue code.

1 (4) (a) Subsection (1) of this section notwithstanding, the retail
2 sale of food and food ingredients is subject to sales tax under RCW
3 82.08.020 if the food and food ingredients are sold through a vending
4 machine. Except as provided in (b) of this subsection, the selling
5 price of food and food ingredients sold through a vending machine for
6 purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

7 (b) For soft drinks and hot prepared food and food ingredients,
8 other than food and food ingredients which are heated after they have
9 been dispensed from the vending machine, the selling price is the total
10 gross receipts of such sales divided by the sum of one plus the sales
11 tax rate expressed as a decimal.

12 (c) For tax collected under this subsection (4), the requirements
13 that the tax be collected from the buyer and that the amount of tax be
14 stated as a separate item are waived.

15 **Sec. 302.** RCW 82.08.0293 and 2010 1st sp.s. c 35 s 305 are each
16 amended to read as follows:

17 (1) The tax levied by RCW 82.08.020 does not apply to sales of food
18 and food ingredients. "Food and food ingredients" means substances,
19 whether in liquid, concentrated, solid, frozen, dried, or dehydrated
20 form, that are sold for ingestion or chewing by humans and are consumed
21 for their taste or nutritional value. "Food and food ingredients" does
22 not include:

23 (a) "Alcoholic beverages," which means beverages that are suitable
24 for human consumption and contain one-half of one percent or more of
25 alcohol by volume; and

26 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
27 tobacco, or any other item that contains tobacco.

28 (2) The exemption of "food and food ingredients" provided for in
29 subsection (1) of this section does not apply to prepared food, soft
30 drinks, (~~bottled water, candy,~~) or dietary supplements. For purposes
31 of this subsection, the following definitions apply:

32 (a) "Dietary supplement" means any product, other than tobacco,
33 intended to supplement the diet that:

34 (i) Contains one or more of the following dietary ingredients:

35 (A) A vitamin;

36 (B) A mineral;

37 (C) An herb or other botanical;

1 (D) An amino acid;

2 (E) A dietary substance for use by humans to supplement the diet by
3 increasing the total dietary intake; or

4 (F) A concentrate, metabolite, constituent, extract, or combination
5 of any ingredient described in this subsection;

6 (ii) Is intended for ingestion in tablet, capsule, powder, softgel,
7 gelcap, or liquid form, or if not intended for ingestion in such form,
8 is not represented as conventional food and is not represented for use
9 as a sole item of a meal or of the diet; and

10 (iii) Is required to be labeled as a dietary supplement,
11 identifiable by the "supplement facts" box found on the label as
12 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as
13 of January 1, 2003.

14 (b) (i) "Prepared food" means:

15 (A) Food sold in a heated state or heated by the seller;

16 (B) Food sold with eating utensils provided by the seller,
17 including plates, knives, forks, spoons, glasses, cups, napkins, or
18 straws. A plate does not include a container or packaging used to
19 transport the food; or

20 (C) Two or more food ingredients mixed or combined by the seller
21 for sale as a single item, except:

22 (I) Food that is only cut, repackaged, or pasteurized by the
23 seller; or

24 (II) Raw eggs, fish, meat, poultry, and foods containing these raw
25 animal foods requiring cooking by the consumer as recommended by the
26 federal food and drug administration in chapter 3, part 401.11 of The
27 Food Code, published by the food and drug administration, as amended or
28 renumbered as of January 1, 2003, so as to prevent foodborne illness.

29 (ii) "Prepared food" does not include the following food or food
30 ingredients, if the food or food ingredients are sold without eating
31 utensils provided by the seller:

32 (A) Food sold by a seller whose proper primary North American
33 industry classification system (NAICS) classification is manufacturing
34 in sector 311, except subsector 3118 (bakeries), as provided in the
35 "North American industry classification system--United States, 2002";

36 (B) Food sold in an unheated state by weight or volume as a single
37 item; or

1 (C) Bakery items. The term "bakery items" includes bread, rolls,
2 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
3 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

4 (c) "Soft drinks" means nonalcoholic beverages that contain natural
5 or artificial sweeteners. Soft drinks do not include beverages that
6 contain: Milk or milk products; soy, rice, or similar milk
7 substitutes; or greater than fifty percent of vegetable or fruit juice
8 by volume.

9 ~~((d) "Candy" means a preparation of sugar, honey, or other natural
10 or artificial sweeteners in combination with chocolate, fruits, nuts,
11 or other ingredients or flavorings in the form of bars, drops, or
12 pieces. "Candy" does not include any preparation containing flour and
13 does not require refrigeration.~~

14 ~~—(e) "Bottled water" means water that is placed in a sealed
15 container or package for human consumption. Bottled water is calorie
16 free and does not contain sweeteners or other additives except that it
17 may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)
18 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;
19 (vi) preservatives; and (vii) only those flavors, extracts, or essences
20 derived from a spice or fruit. "Bottled water" includes water that is
21 delivered to the buyer in a reusable container that is not sold with
22 the water.)~~

23 (3) Notwithstanding anything in this section to the contrary, the
24 exemption of "food and food ingredients" provided in this section
25 applies to food and food ingredients that are furnished, prepared, or
26 served as meals:

27 (a) Under a state administered nutrition program for the aged as
28 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
29 74.38.040(6);

30 (b) That are provided to senior citizens, individuals with
31 disabilities, or low-income persons by a not-for-profit organization
32 organized under chapter 24.03 or 24.12 RCW; or

33 (c) That are provided to residents, sixty-two years of age or
34 older, of a qualified low-income senior housing facility by the lessor
35 or operator of the facility. The sale of a meal that is billed to both
36 spouses of a marital community or both domestic partners of a domestic
37 partnership meets the age requirement in this subsection (3)(c) if at

1 least one of the spouses or domestic partners is at least sixty-two
2 years of age. For purposes of this subsection, "qualified low-income
3 senior housing facility" means a facility:

4 (i) That meets the definition of a qualified low-income housing
5 project under 26 U.S.C. Sec. 42 of the federal internal revenue code,
6 as existing on August 1, 2009;

7 (ii) That has been partially funded under 42 U.S.C. Sec. 1485; and

8 (iii) For which the lessor or operator has at any time been
9 entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42
10 of the federal internal revenue code.

11 (4)(a) Subsection (1) of this section notwithstanding, the retail
12 sale of food and food ingredients is subject to sales tax under RCW
13 82.08.020 if the food and food ingredients are sold through a vending
14 machine. Except as provided in (b) of this subsection, the selling
15 price of food and food ingredients sold through a vending machine for
16 purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

17 (b) For soft drinks and hot prepared food and food ingredients,
18 other than food and food ingredients which are heated after they have
19 been dispensed from the vending machine, the selling price is the total
20 gross receipts of such sales divided by the sum of one plus the sales
21 tax rate expressed as a decimal.

22 (c) For tax collected under this subsection (4), the requirements
23 that the tax be collected from the buyer and that the amount of tax be
24 stated as a separate item are waived.

25 **Sec. 303.** RCW 82.12.0293 and 2010 1st sp.s. c 23 s 903 are each
26 amended to read as follows:

27 (1) The provisions of this chapter do not apply in respect to the
28 use of food and food ingredients for human consumption. "Food and food
29 ingredients" has the same meaning as in RCW 82.08.0293.

30 (2) ~~((Until July 1, 2013,))~~ The exemption of "food and food
31 ingredients" provided for in subsection (1) of this section does not
32 apply to prepared food, soft drinks, ~~((bottled water, candy,))~~ or
33 dietary supplements. ~~((Beginning July 1, 2013, the exemption of "food
34 and food ingredients" provided for in subsection (1) of this section
35 does not apply to prepared food, soft drinks, candy, or dietary
36 supplements.))~~ "Prepared food," "soft drinks," and "dietary

1 supplements(~~(7)~~)" (~~"candy," and "bottled water"~~) have the same
2 meanings as in RCW 82.08.0293.

3 (3) Notwithstanding anything in this section to the contrary, the
4 exemption of "food and food ingredients" provided in this section
5 (~~apply~~) applies to food and food ingredients which are furnished,
6 prepared, or served as meals:

7 (a) Under a state administered nutrition program for the aged as
8 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
9 74.38.040(6);

10 (b) Which are provided to senior citizens, individuals with
11 disabilities, or low-income persons by a not-for-profit organization
12 organized under chapter 24.03 or 24.12 RCW; or

13 (c) That are provided to residents, sixty-two years of age or
14 older, of a qualified low-income senior housing facility by the lessor
15 or operator of the facility. The sale of a meal that is billed to both
16 spouses of a marital community or both domestic partners of a domestic
17 partnership meets the age requirement in this subsection (3)(c) if at
18 least one of the spouses or domestic partners is at least sixty-two
19 years of age. For purposes of this subsection, "qualified low-income
20 senior housing facility" has the same meaning as in RCW 82.08.0293.

21 **Sec. 304.** RCW 82.12.0293 and 2010 1st sp.s. c 35 s 306 are each
22 amended to read as follows:

23 (1) The provisions of this chapter do not apply in respect to the
24 use of food and food ingredients for human consumption. "Food and food
25 ingredients" has the same meaning as in RCW 82.08.0293.

26 (2) The exemption of "food and food ingredients" provided for in
27 subsection (1) of this section does not apply to prepared food, soft
28 drinks, (~~bottled water, candy,~~) or dietary supplements. "Prepared
29 food," "soft drinks," and "dietary supplements(~~(7)~~)" (~~"candy," and~~
30 ~~"bottled water"~~) have the same meanings as in RCW 82.08.0293.

31 (3) Notwithstanding anything in this section to the contrary, the
32 exemption of "food and food ingredients" provided in this section
33 applies to food and food ingredients which are furnished, prepared, or
34 served as meals:

35 (a) Under a state administered nutrition program for the aged as
36 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
37 74.38.040(6);

1 (b) Which are provided to senior citizens, individuals with
2 disabilities, or low-income persons by a not-for-profit organization
3 organized under chapter 24.03 or 24.12 RCW; or

4 (c) That are provided to residents, sixty-two years of age or
5 older, of a qualified low-income senior housing facility by the lessor
6 or operator of the facility. The sale of a meal that is billed to both
7 spouses of a marital community or both domestic partners of a domestic
8 partnership meets the age requirement in this subsection (3)(c) if at
9 least one of the spouses or domestic partners is at least sixty-two
10 years of age. For purposes of this subsection, "qualified low-income
11 senior housing facility" has the same meaning as in RCW 82.08.0293.

12 NEW SECTION. **Sec. 305.** The following acts or parts of acts are
13 each repealed:

- 14 (1) RCW 82.08.--- and 2010 1st sp.s c 23 s 904;
- 15 (2) RCW 82.12.--- and 2010 1st sp.s c 23 s 905;
- 16 (3) RCW 82.08.--- and 2010 1st sp.s c 23 s 906;
- 17 (4) RCW 82.12.--- and 2010 1st sp.s c 23 s 907; and
- 18 (5) RCW 82.04.--- and 2010 1st sp.s c 23 s 908.

19 **PART IV**

20 **Repeal of Tax Increase on Carbonated Beverages**

21 NEW SECTION. **Sec. 401.** RCW 82.--.--- through 82.--.--- and 2010
22 1st sp.s c 23 ss 1401 through 1406 are each repealed.

23 **PART V**

24 **Miscellaneous Provisions**

25 NEW SECTION. **Sec. 501.** The provisions of this act are to be
26 construed liberally so as to effectuate its intent.

27 NEW SECTION. **Sec. 502.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 503.** Sections 302 and 304 of this act take
2 effect on the date that chapter 35, sections 305 and 306, Laws of 2010
3 (Engrossed House Bill No. 2561) take effect.

Originally filed in Office of Secretary of State May 19, 2010.
Approved by the People of the State of Washington in the General
Election on November 2, 2010.